IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12951 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJA COLD STORAGE THRO.PARTNER

Versus

G.E.B.

Appearance:

1. Special Civil Application No. 12951 of 2004

MR BHARAT T RAO for Petitioner No. 1

MR MANISH K KAJI for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/12/2004

ORAL JUDGEMENT

Rule. Shri Manish K Kaji, Learned Advocate waives service of rule on behalf of the respondents.

With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 3.7.2004 passed by the Appellate Committee of the Gujarat Electricity Board passed in Appeal No.46 of 2004. On the inspection being carried out by the officers of the respondent Gujarat Electricity Board, it was found by the Authority that the terminal cover seal was found tampered with and both the meter body seals were found duplicate. It appears that the meter was sent to the laboratory for inspection and thereafter, a supplementary bill was issued treating the case as theft of electrical energy of Rs.22,68,360/-. Being aggrieved and dissatisfied with the supplementary bill, the petitioner preferred appeal before the Appellate Committee. It was the specific contention on behalf of the petitioner that the meter of the petitioner was changed on 30.11.2002 and the number of the meter was CQ 96564. It is the case of the petitioner that apart from the fact that the meter was sent to the laboratory for the purpose of inspection after a period of one and half years, the number which is shown in the report is CQ 96504 which is not that of the petitioner and somebody else's meter has been checked for which the inspection report has been submitted by the Laboratory Inspector. Considering some fax message produced by the Executive Engineer as well as one letter by the Executive Engineer that he had physically verified the number of the meter and it was found CQ 96565 which is the serial number of the meter of the electrical installation of the petitioner without giving any opportunity to the petitioner to meet with the same, the Appellate Authority accepted the same and accepted that the meter which was inspected by the laboratory Inspector was CQ 96564 and not CQ 96504.

3. Shri B.T.Rao, Learned Advocate appearing for the petitioner has submitted that the meter which was checked and inspected by the Laboratory Inspector was CQ 96504 and not CQ 96564. It is further submitted that the petitioner has not been given any opportunity to controvert the fax message of the Executive Engineer and/or the letter written by the Executive Engineer to the effect that he had physically verified the number of the meter and it was found CQ 96564. Under the circumstances, he has requested to quash and set aside the judgment and order passed by the Appellate Committee.

4. Shri Manish Kaji, Learned Advocate appearing for

the petitioner has submitted that considering the fax message as well as the letter of the Executive Engineer to the effect that he had physically verified the number of the meter and it was found CQ 96564 which was the serial number of the meter of the electrical installation of the petitioner, the Appellate Committee has passed an order which is just and proper in accordance with law.

5. Heard the Learned Advocates for the parties. In the proforma 15, the serial number of the meter of the electrical installation of the petitioner is shown as CQ 96564. In the report submitted by the Electrical Inspector and the checking sheet is CQ 96504. Only on the basis of the fax message and letter submitted by the Executive Engineer, to the effect that he had physically verified the number of the meter and it was found CQ 96564 which is the serial number of the meter and it was found that CQ 96564 which is the serial number of the meter of the electric installation of the petitioner, the Appellate Committee has held that the meter which was checked and inspected by the Electrical Inspector was CQ 96564 and not 96504. It appears that from the record that no opportunity has been given to the petitioner to meet with and/or controvert the fax message as well as the letter written by the Executive Engineer. Under the circumstances, the impugned judgment and order passed by the Appellate Committee of the Gujarat Electricity Board is against the principles of natural justice and is required to be quashed and set aside and the matter is required to be remanded to the Appellate Committee to decide afresh and on merits and after giving an opportunity to the petitioner to controvert the fax message submitted by the Engineer and to contend that the meter which as checked was CQ 96564 and not CQ 96504. It will be open for the respondents even to produce the evidence and/or show any material that the meter which was checked was CQ 96504 and not CQ 96564 which may be considered by the Appellate Authority in accordance with law and on merits. For the reasons stated above, the impugned judgment and order dated 30.7.2004 in Appeal No.A-46 of 2004 and consequential supplementary bill is hereby quashed and set aside. The matter is remanded to the Appellate Committee for deciding the same afresh in accordance with law and on merits and considering the observations made hereinabove. However, it is made clear that the amount which is deposited by the petitioner may not be refunded to the petitioner at this stage and the same may be adjusted subject to the ultimate outcome that may be passed by the Appellate Committee on remand. Rule is made absolute to the above extent with no order as to coss.

(M.R.Shah, J)

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